

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201146014**

Release Date: 11/18/2011

Index Number: 1502.75-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-125464-11
Date:
August 16, 2011

Legend

Parent =

Sub =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter from your authorized representatives, dated June 10, 2011, requesting a ruling, under §1.1502-75(b)(2), that Sub joined in the filing of a consolidated Federal income tax return with Parent for its Year 1 return. Additional information was received in a letter dated July 12, 2011. The information submitted is summarized below.

SUMMARY OF FACTS

Parent is a corporation that was incorporated shortly before the beginning of Year 1 and adopted the calendar year as its accounting period. Beginning with its Year 1 Federal income tax return, Parent filed a consolidated return that included Sub. Parent filed Form 851 (Affiliations Schedule) with its return, but failed to include Form 1122 (Authorization & Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return).

For subsequent years (these years and Year 1 are collectively referred to as “the affected taxable years”), Parent filed consolidated Federal income tax returns and included Form 851 with each such return. These returns included additional subsidiaries (these subsidiaries and Sub are collectively referred to as “the subsidiaries”). During Year 2, a potential buyer for Parent performed a due diligence search and discovered that it had not filed a Form 1122 with its Year 1 return. Parent then filed this request.

The statute of limitations under section 6501(a) has expired on Parent’s Year 1 return.

REPRESENTATIONS

1. Except for the failure to timely file Form 1122, Parent and the subsidiaries were eligible to file a consolidated Federal income tax return for the affected taxable years.
2. All of the income and deductions for each member of Parent's group was included in the consolidated Federal income tax return for the affected taxable years.
3. No separate Federal income tax returns were filed by any of the members of Parent's group for the affected taxable years.
4. All the members of Parent's group were included (and for future filings will be included) on Parent's Form 851 for the affected taxable years.
5. The failure to timely file the Treas. Reg. § 1.1502-75(a)(1) election for the Parent’s Year 1 consolidated taxable year was inadvertent.

LAW

Treas. Reg. §1.1502-75(a)(1) provides, in part, that an affiliated group of corporations that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation that has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under section 1502, in accordance with Treas. Reg. §1.1502-75(b). If a group wishes to exercise its privilege of filing a consolidated return, such return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent’s tax return.

With regard to a corporation’s consent for a group's first consolidated year, Treas. Reg. §1.1502-75(b)(1) provides, as a general rule, that the corporation’s consent shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return if it files a

Form 1122 in the manner specified in Treas. Reg. §1.1502-75(h)(2).

Treas. Reg. §1.1502-75(h)(2) provides that if a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. For taxable years relevant to this ruling request, the group must attach to the consolidated return for the taxable year either executed Forms 1122 or unsigned copies of the completed Forms 1122 (and retain the signed originals in its records in the manner required by Treas. Reg. §1.6001-1(e)). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Treas. Reg. §1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member nevertheless has joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include: (i) whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) whether or not a separate return was filed by the member for that taxable year; and (iii) whether or not the member was included in the affiliations schedule, Form 851. If the Commissioner determines, under the facts and circumstances, that the member has joined in the making of the consolidated return, such member will be treated for purposes of Treas. Reg. §1.1502-75(h)(2) as if it had filed a Form 1122 for such year.

RULING

Based solely on the information submitted and representations made, we rule that Sub is treated, under Treas. Reg. §1.1502-75(h)(2), as if it had filed a Form 1122 with the consolidated Federal income tax return filed by Parent for Year 1. Treas. Reg. §1.1502-75(b)(2).

PROCEDURAL STATEMENTS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Richard M. Heinecke
Assistant to the Branch Chief, Branch 6
(Corporate)

cc: